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5 IN THE UNITED STATES COURT OF APPEALS
6 FOR THE NINTH CIRCUIT
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8 JAMES TOUTOULIS

9 Petitioner

10 vs

11 UNITED STATES IMMIGRATION and
12 NATURALIZATION SERVICE,
Respondent.

✓
No. 22231

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14 PETITIONER'S BRIEF on JURISDICTION
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Text, Section 106(a) Immigration and Nationality Act.
Certificate of Service
Certificate of compliance with rule 18 & 19.

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375 U.S.217, 84 S. Ct. 306 (1963).

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IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JAMES TOUTOULIS,

No. 22231

Petitioner,

PETITIONER'S BRIEF AND
POINTS AND AUTHORITIES
ON JURISDICTION.

VS

UNITED STATES IMMIGRATION and
NATURALIZATION SERVICE,

Respondent.

This court is granted jurisdiction by Section

106(a) of the Immigration and Nationality Act, 8 U.S.C.

1105 a to review the final order of deportation, outstanding against the petitioner, including jurisdiction to review the underlying order rescinding petitioner's permanent residence status.

1. The administrative record and transcript filed by the United States Immigration and Naturalization Service discloses that the petitioner herein entered the United States of America, Port of New York on June 10, 1961 as a non-immigrant visitor coupled with permission to remain here

1 until September 10, 1961; that on July 25, 1961 he married
2 Yolanda Orozco Flynn, a United States citizen; that by
3 virtue of Yolanda Orozco Flynn's visa petition, the peti-
4 tioner's status was adjusted to a lawful, permanent resi-
5 dent alien; that on May 17, 1965 the Immigration and
6 Naturalization Service instituted proceedings under Section
7 246 of the Immigration and Nationality Act whereby said
8 petitioner's permanent status was sought to rescind his
9 permanent resident status.

10 The said Department's Special Inquiry Officer on the
11 6th day of June, 1966 thereupon in pursuant to Section 245,
12 after having conducted a partial hearing, held that your
13 petitioner was illegally remaining in the United States on
14 May 17, 1965 and entered an order June 6, 1966 rescinding
15 petitioner's adjustment of status whereby your petitioner
16 was ordered to leave the United States on or before April
17 20, 1967.

18 2. On April 20, 1967 your petitioner filed a Notice of
19 Appeal which was duly served upon all the parties in the
20 above entitled action on April 23, 1967 requesting a re-
21 hearing of all the facts, which was done after your pe-
22 titioner was granted an extension to extend the privilege
23 of voluntary departure up to and including April 23rd, 1967.

24 3. On April 20, 1967 the United States Department of
25 Justice Immigration and Naturalization entered the follow-
26 ing order to wit:

1 "ORDER: IT IS ORDERED that in lieu of an order of deporta-
2 tion, the respondent be granted voluntary departure with-
3 out expense to the Government within such time and under
4 such conditions as the District Director shall direct.
5 IT IS FURTHER ORDERED that if the respondent fails to
6 depart when and as required, the privilege of voluntary
7 departure shall be withdrawn without further notice or
8 proceedings and the following order shall thereupon become
9 immediately effective: Respondent shall be deported from
10 the United States to Greece on the charge contained in the
11 Order to Show Cause." (Later)

12 4. The said Board of Immigration of Appeals ruled as
13 follows: That this matter may be stayed until such time
14 as a decision may be had in the matter of the Wazari case
15 under Identification No. A 12,269,334 for the reason that
16 the issues in the Wazari case are identical and will lend
17 itself to a single opinion as may be forthcoming through
18 the United States Courts in the interpretation of Sections
19 241 (f) and 242 (b) and (4) of the Immigration Naturaliza-
20 tion Act.

21 5. At this time I want to call attention to the Court
22 that there is some distinction between this matter and the
23 Wazari case insofar as Wazari's had to do with a student's
24 visa and the case at bar is one where the petitioner married
25 and therefore a permanent visa was to him granted and the
26 said permanent visa did issue, only to be thereafter

rescinded upon information gathered by the Investigator for the Immigration Service. Nevertheless, your petitioner on February 27, 1964 married his present wife, a natural born citizen of the United States; but said later marriage was prior to the revocation of your petitioner's permanent residence status. It should also be noted herein that a daughter was born, issue of this later marriage, named Liberty Sophia Toutoulis presently approximately three and one-half years of age. (Reporter's Transcript dated April 20, 1967, page 26)

6. In reply to the Special Inquiry Officer for the Immigration Service directed to the petitioner herein:

"Q What was the grounds for divorcing - whatever her name was? Give her name. What was her name?

A Yolanda.

Q What was the grounds for divorcing Yolanda?

A Well she, of course, she put me out - she had abortion (unintelligible)

SPECIAL INQUIRY OFFICER: (TO RESPONDENT)

Q I'm sorry I can't understand what you said. Will you please speak distinctly and carefully. Now will you repeat your answer?

A Yes, Sir.

MR. HILL TO RESPONDENT: Q. She had an abortion, was that (interrupted)

A Had an abortion, that's why I left her.

1 Q Of your child?

2 A My child

3 Q Is that the grounds you say (interrupted)

4 A Yes, Sir, that's the reason that I left her - I never
5 back to her (interrupted)"

6 It may also be noted here that Mr. Toutoulis and his
7 present wife reside in the City of Los Angeles and that they
8 are very happy. Said child is a citizen of the United States
9 for the reason that she was born in Los Angeles.

10 7. Your petitioner at all times herein mentioned sought to
11 call Yolanda Orozco Flynn (his first wife) as a witness for
12 cross-examination, but for diverse reasons no one seems to
13 know where to locate her, not even her own mother, for the
14 purpose of showing and proving the fact that when he did
15 marry her he married her for the reason that he was in love
16 with her, notwithstanding that the Government through its
17 Investigator and by reason of the Hearing Officer's summation
18 of the findings held that your petitioner married her only
19 for the purpose of evading the Immigration Quota allotted to
20 citizens of Greece. However, after examining Exhibit 19,
21 which was introduced into evidence on October 6th, 1965 but
22 dated November 13, 1961, which reads as follows:

23 "Dear Mama,

24 We've heard that you are in the hospital and we are
25 very sorry. Please, Mama, try to rest and take everything
26 easily so that you will be well and home soon. We worry

1 very much about you and always hope that you do not lack
2 in anything.

3 Dear Mama, we are both very well, Jim and I, and
4 I love Jim very much. I will try to be very good with him,
5 I promise you. Please get well soon and write when you can.

6 Dear Mama, very soon Jim and I are going to have
7 a baby. I love him & want to make him happy. I am very
8 happy with him. Soon, Mama, we will send you some pictures.
9 I hope you like them. Please don't worry, soon maybe I can
10 very much. I hope you like me. Maybe you can read more in
11 this letter than I am writing. I write only words but
12 please read between the lines & maybe understand my thoughts.
13 I love Jim, your son. I love you, his mother, and every-
14 thing else he loves. Please think about us often and maybe
15 send us your blessing because then our marriage will be
16 perfect and our child will be blessed also.

17 Mama, I am sending you \$5 dollars, it isn't very
18 much but maybe you can buy some coffee with it.

19 Rest now and relax and eat well because you must
20 get strong. Good bye for now.

21 Love,

22 Yolanda"

23 We must therefore conclude that Yolanda Toutoulis
24 did love your petitioner. The words speak for themselves
25 "Dear Mama: Very soon Jim and I are going to have a baby.
26 I love him.", the all of which contradicts the theory that

1 she was paid to marry James Toutoulis. Exhibit 19 is
2 entirely in her own hand writing.

3 8. Your petitioner in order to live with himself and in
4 good conscience was more or less forced to divorce Yolanda
5 for the reason that she violated the laws of California and
6 the Church laws of the Greek Church when she went to Tijuana
7 whereat she had an abortion performed without first noti-
8 fying your petitioner or ever obtaining his consent and
9 naturally he would have at that time at least made an effort
10 to stop her from having such an abortion. He was greatly
11 concerned in having a child by her, since he undertook to
12 support and rear Yolanda's children from a prior marriage.
13 The foundation for the above mentioned letter admitting it
14 into evidence was qualified on page 98 of the transcript
15 dated October 6, 1965 as follows:

16 "THE SPECIAL INQUIRY OFFICER TO RESPONDENT:

17 Q Mr. Toutoulis, who is the Dear Mama that these letters
18 are addressed to?

19 A My mother.

20 Q What is her name?

21 A Yannoula Toutoulis.

22 Q And, where was she living on October 31, 1961, and
23 November 13th, 1961?

24 A In Sparta, Greece.

25 Q Is she still living there?

26 A Yes.

1 Q Has she ever been in the United States?

2 A Yes.

3 Q When?

4 A Two years ago.

5 9. The transcript discloses that there were many innuendoes
6 setting forth that your petitioner and/or his brother paid
7 certain sums of money for the purpose of having Yolanda
8 consent to a marriage which was duly denied by your pe-
9 titioner and his brother. However, monies that were paid
10 from time to time to Yolanda were only for the purpose of
11 paying ordinary expenses such as rent, food, medical bills
12 and the likes, and not for a consideration to evading the
13 Immigration restrictions.

14 As per the transcript dated October 6, 1965 the Special
15 Inquiry Officer brought out the following testimony:

16 " Q Mrs. Orozco, I show you two photographs - I have
17 shown them to Mr. Robertson - and ask you if you recognize
18 the people in those photographs.

19 A Yes.

20 Q And, if so, do these two photographs appear to be the
21 same people?

22 A Yes.

23 Q And do you recognize them?

24 A Yes.

25 Q And who are they?

26 A My daughter and James Toutoulis."

1 Quoting further from page 71 of said transcript, line
2 5:

3 "Q Mrs. Orozco, do you know the whereabouts of your
4 daughter Yolanda at the present time?

5 A No, I don't."

6 Turning over to page 72 of said transcript, line 2:

7 Q Did you have any discussion with your daughter
8 about any money that was to be paid as a result of the
9 marriage between her and Jim?

10 A No."

11 The above has a tendency to prove that the Government
12 for its final conclusion based its order upon hearsay evi-
13 dence for it is not possible to cross-examine a statement
14 written down by an Investigator and submitted as evidence.
15 The former Mrs. Toutoulis was not present at the hearing
16 conducted on or about October 6, 1965. If for no other
17 reason the daughter, to wit, Liberty Sophia Toutoulis has
18 a legal right to keep her father within the United States
19 to protect her support and care as any citizen would so
20 claim and it cannot be stated that her mother was not a
21 citizen.

22 Respectfully submitted,

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24 Paul Hill, Attorney for
25 Petitioner
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The jurisdictional statute under which petitioner seeks review by this Court of the deportation order and the underlying rescission order is Section 106(a) of the Immigration and Nationality Act, codified in 8 U.S.C. 1105a. Section 106(a) provides that the procedure prescribed by 28 U.S.C. ss 2341-2352 (formerly 5 U.S.C. ss 1031-1042) for judicial review by the Courts of Appeals of orders of certain federal agencies shall also "apply to, and shall be the sole and exclusive procedure for, the judicial review of all final orders of deportation heretofore or hereafter made against aliens within the United States pursuant to administrative proceedings under section 242(b) of this Act or comparable provisions of any prior Act . . .". Section 106(a) further provides that a petition for review of a final order of deportation pursuant to this procedure shall be determined by the Court of Appeals "solely upon the administrative record upon which the deportation order is based".

" Petitioner may not be deported until proceedings under 8 U.S.C. 1252(b) have been conducted. From an adverse ruling, petitioner may appeal to the Board of Immigration Appeals, and finally under Section 1105(a) (of Title 8, U.S.C., Section 106(a) of the Immigration and Nationality Act) the entire matter is subject to review in the Court of Appeals."

1 In the present case, petitioner did exhaust all
2 possible administrative remedies by carrying the deporta-
3 tion proceeding through an appeal to the Board of Immigra-
4 tion Appeals before seeking judicial review of the rescis-
5 sion order. In the deportation proceeding itself, both
6 before the Special Inquiry Officer and the Board, petitioner
7 continued to challenge the validity of the underlying re-
8 scission order.

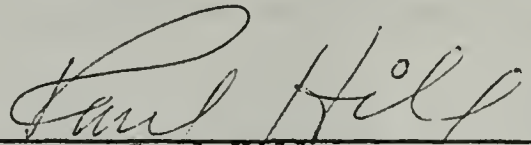
9 Alternatively, it is submitted that if the direct
10 grant of exclusive jurisdiction in Section 106(a) does not
11 include jurisdiction to review a rescission order consti-
12 tuting the basis for a final order of deportation, this
13 Court nevertheless has jurisdiction to review such a res-
14 cission order pendent or ancillary to its Section 106(a)
15 jurisdiction.

16 In Foti, the Supreme Court, having determined that
17 the direct jurisdictional grant in Section 106(a) includes
18 jurisdiction to review an order denying suspension of de-
19 portation, found it unnecessary to determine whether orders
20 not encompassed by Section 106(a) are reviewable by the
21 Courts of Appeals pendent or ancillary to a Section 106(a)
22 review of a deportation order. See footnote 14, 375 U.S.
23 217, 227; 84 S. Ct. 306, 313.

24 It is petitioner's view that the judicial interpreta-
25 tion of Section 106(a) clearly establishes that this Court
26 has jurisdiction to review the order rescinding petitioner's

1 permanent resident status either as part of the jurisdic-
2 tion directly granted by Section 106(a) or pendent to such
3 jurisdiction.
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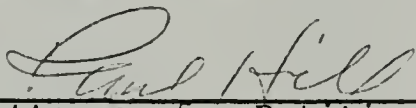
5 Dated: January 14, 1968.

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8 Paul Hill
9 Attorney for Petitioner
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1 CERTIFICATION

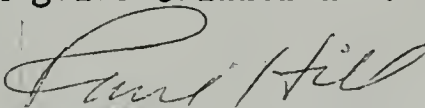
2 I certify that in connection with the preparation of this
3 brief, I have examined Rules 18 and 19 of the United States
4 Court of Appeals for the ninth Circuit, and that, in my opinion
5 the foregoing brief is in full compliance with these rules.

6 
7 Attorney for Petitioner

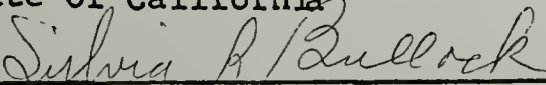
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9 AFFIDAVIT OF SERVICE BY MAIL

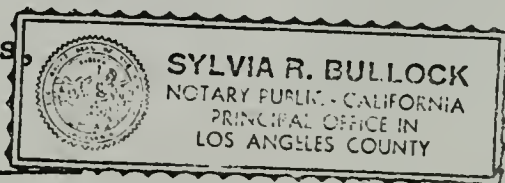
10 State of California)
11 County of Los Angeles) (SS

12 Paul Hill, being first duly sworn deposes
13 and says: that he is an active member of the State Bar of
14 California - and not a party to the within action, that his
15 address is 6331 Hollywood Boulevard, Los Angeles California,
16 that he served the within Brief 0. Jurisdiction and points
17 of authority by mailing a copy thereof to the Office of the
18 United States District Attorney- for the Central District
19 of California , Los Angeles California 90012; directed to
20 the Attention of Dzintra I. Janays, Ass't U.S. Attorney,
21 312 No. Spring Street Los Angeles California .

22 
23 Paul Hill, attorney for Petitioner

24 Subscribed and sworn to before me
25 the undersigned - Notary Public
26 in and for the County of Los Angeles
State of California


Notary Public



My Commission Expires March 16, 1971

